

Internal Revenue Service
memorandum

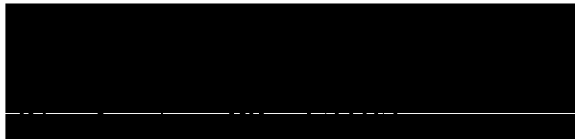
date: DEC 03 1991

to: Director, Internal Revenue Service Center
Kansas City, MO
Attn: Entity Control

from: Technical Assistant
Employee Benefits and Exempt Organizations

subject: CC:EE:3 - TR-45-1860-91
Railroad Retirement Act Status

Attached for your information and appropriate action is a copy of a letter from the Railroad Retirement Board concerning the status under the Railroad Retirement Act and the Railroad Unemployment Insurance Act of:



We have reviewed the opinion of the Railroad Retirement Board and, based solely upon the information submitted, concur in the conclusion that [REDACTED] is not an employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

(Signed) Ronald L. Moore

RONALD L. MOORE

Attachment:

Copy of letter from Railroad Retirement Board

cc: Mr. Gary Kuper
Internal Revenue Service
200 South Hanley
Clayton, MO 63105

008918

UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
844 RUSH STREET
CHICAGO, ILLINOIS 60611

BUREAU OF LAW

Assistant Chief Counsel
(Employee Benefits and
Exempt Organizations)
Internal Revenue Service
1111 Constitution Avenue., N.W.
Washington, D.C. 20224

OCT 04 1991

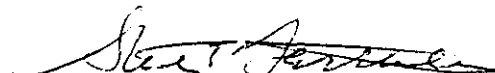
Attention: CC:IND:1:3

Dear Sir:

In accordance with the coordination procedure established between the Internal Revenue Service and this Board, I am enclosing for your information a copy of an opinion in which I have expressed my determination as to the status under the Railroad Retirement and Railroad Unemployment Insurance Acts of the following:



Sincerely yours,


Steven A. Bartholow
Deputy General Counsel

Enclosure

MEMORANDUM

OCT 03 1991

TO: Director of Research and Employment Accounts

FROM: Deputy General Counsel

SUBJECT: [REDACTED]
Employer Status

This is in response to your request for my opinion as to whether the [REDACTED] ([REDACTED]), is an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts. The employer status of [REDACTED] has not previously been considered.

According to ICC Finance Docket No. [REDACTED], [REDACTED], and [REDACTED] ([REDACTED])^{1/}, filed a notice of exemption for [REDACTED] to acquire and for [REDACTED] to lease and operate approximately [REDACTED] miles of rail line in the State of [REDACTED] owned by [REDACTED] ([REDACTED]), an employer under the Acts. According to the notice, [REDACTED] was to acquire the railroad lines and immediately lease them to [REDACTED], an affiliate of [REDACTED]^{2/}, which would assume the common carrier obligation on the line.

Section 1(a)(1) of the Railroad Retirement Act defines the term "employer," in pertinent part, as follows:

"The term 'employer' shall include--

"(i) any express company, sleeping-car company, and carrier by railroad, subject to part 1 of the Interstate Commerce Act;

"(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service,

1/ [REDACTED] ([REDACTED]) is an employer covered under the Acts, with service creditable since [REDACTED]. See Notice [REDACTED], dated [REDACTED].

2/ Both [REDACTED] and [REDACTED] are subsidiaries of [REDACTED] ([REDACTED]).

Director of Research and Employment Accounts

and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad * * *."

A similar provision is contained in section 1(a) of the Railroad Unemployment Insurance Act (45 U.S.C. § 351(a)).

According to information provided by [REDACTED] (REDACTED), responding on behalf of [REDACTED], [REDACTED] has by contract provided for [REDACTED] to operate the lines and does not do so itself. The Board had previously held that a company that retains a residual duty to provide service over track which it owns is an employer under the Acts. See Legal Opinion L-40-593, approved by Board Order 41-10. However, in Board Order 89-74 the Board held that a lessor employer, which had sold all of its railroad assets so that the lessor no longer had the equipment necessary to resume railroad operations, was no longer an employer under section 1(a)(1)(i) of the RRA. See appeal of Board of Trustees of the Galveston Wharves, B.O. 89-74, April 24, 1989. In this case [REDACTED] never had any railroad equipment.

[REDACTED] has no active employees and is not now operating a railroad, nor does it have the capability to do so. It merely owns lines of track which are operated by a rail carrier employer. As such it is analogous to the Massachusetts Bay Transportation Authority, which was held not to be an employer under the Acts because it had never commenced operation of its rail line, but merely contracted with operating companies for operation of the line. See Legal Opinion L-90-160. See also Legal Opinions L-91-92 concerning Southern Electric Generating Company and L-90-182 concerning Shannon Transport, Inc., cases involving similar fact situations and in which the companies concerned were also held not to be employers under the Acts. Accordingly, it is my opinion that [REDACTED] is not an employer under section 1(a)(1)(i) of the RRA.

Under section 1(a)(1)(ii) of the RRA a company which is owned or controlled by or under common control with a rail carrier and which performs a service in connection with railroad transportation is also considered to be an employer under the Act. [REDACTED], [REDACTED] of [REDACTED], has actual control of at least [REDACTED] employers under the Acts, [REDACTED] and [REDACTED] (see ICC Finance Docket No. [REDACTED], [REDACTED]). I conclude, therefore, that [REDACTED] is under common control with those affiliated rail carriers.

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The question then becomes whether [REDACTED] performs a service in connection with railroad transportation. Section 202.7 of the regulations (20 CFR 202.7) defines a service as in connection with railroad transportation if it is reasonably directly related, functionally or economically, to the performance of rail carrier obligations. The evidence in this case shows [REDACTED] to be essentially a paper company that performs no services for [REDACTED] or [REDACTED] or for any other rail-related company. Accordingly, it is my opinion that [REDACTED] is not an employer under section 1(a)(1)(ii) of the RRA.

Based on the above discussion, it is my opinion that [REDACTED] is not an employer under the Acts administered by the Board.

An appropriate Form G-215 is attached.



Steven A. Bartholow

Attachment


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